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December 11, 2019

**Via ECF**

Honorable Lorna G. Schofield  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

Re: *Jane Doe, et al. v. The Trump Corporation, et al.*, 18-cv-09936 (LGS)

Dear Judge Schofield:

In response to Plaintiffs' letters requesting a pre-motion conference on two motions to compel discovery, and pursuant to the Court's Individual Rule III(A), Defendants write respectfully to note their objection to Plaintiffs' efforts to enforce Rule 45 subpoenas addressed to third parties for documents in this matter.

Since September 5, 2019, Plaintiffs have served, or noticed their intention to serve, thirty-four Rule 45 subpoenas seeking documents from third parties and purported third parties. Yesterday afternoon, Plaintiffs filed two letter motions to compel non-parties Metro-Goldwyn-Mayer Studios Inc. and ACN Opportunity LLC to produce records. None of that discovery is appropriate. On September 17, 2019, Defendants filed a motion to compel arbitration. *See generally* ECF Nos. 113, 114. On September 27, 2019, that motion was fully briefed. *See* ECF Nos. 114, 120, 121. If that motion is granted, the arbitration agreements that Plaintiffs signed will require that Plaintiffs pursue their claims in arbitration, rather than in this Court. *See* ECF No. 114 at 10. If the motion is denied, Defendants will immediately appeal, as is their right. *See* 9 U.S.C. § 16.

In the meantime, Plaintiffs are pursuing discovery to which they will not be entitled in arbitration. The Second Circuit's position on this is clear: "the FAA does not authorize arbitrators to compel pre-hearing document discovery from entities not party to the arbitration proceedings." *Life Receivables Tr. v. Syndicate 102 at Lloyd's of London*, 549 F.3d 210, 216-17 (2d Cir. 2008)). *See also Wash. Nat'l Ins. Co. v. Obex Grp. LLC*, 18 CV 9693 (VB), 2019 WL 266681, at \*6 (S.D.N.Y. Jan. 18, 2019) ("Section 7 does not authorize arbitrators to issue pre-hearing document subpoenas to nonparty witnesses.").

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For reasons previously stated to the Court, Defendants continue to object to Plaintiffs' exploitation of the liberal discovery rules that apply in this forum in a dispute that, under settled Second Circuit precedent, belongs in arbitration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'JCH', is positioned below the text 'Respectfully submitted,'.

Joanna C. Hendon

cc: Jessica Stebbins-Bina, Esq. (via e-mail)  
*Counsel for Metro-Goldwyn-Mayer Studios Inc.*  
Stephanie E. Niehaus, Esq. (via e-mail)  
*Counsel for ACN Opportunity LLC*